

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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SIU SAY,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration,  
Port of San Francisco,

Appellee.

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Transcript of Record.

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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
Second Division.

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FILED  
SEP 11 1909  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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### **Names of Attorneys of Record.**

For Petitioner and Appellant:

JOSEPH P. FALLON, Esq.,  
San Francisco, Cal.

For Respondent and Appellee:

UNITED STATES ATTORNEY,  
San Francisco, Cal.

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW, on Habeas Corpus.

### **Praeceptum for Transcript of Record.**

To the Clerk of said Court:

Sir: Please make copies of the following papers to be used in preparing transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer to petition.
4. Minute order regarding immigration record.
5. Judgment and order dismissing order to show cause and denying petition for writ.
6. Notice of appeal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.

10. Stipulation and order regarding immigration record.
11. Clerk's certificate.
12. Citation on appeal—original and copy.

JOSEPH P. FALLON,  
Attorney for Petitioner.

[Endorsed]: Filed Sep. 5, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[1\*]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

**Petition for Writ of Habeas Corpus.**

To the Honorable, the Southern Division of the  
United States District Court, for the Northern  
District of California, Second Division:

The petition of Siu Say respectfully shows:

That your petitioner is a lawfully domiciled Chinese merchant and a resident of the State and Northern District of California; that Siu Mooy Chew, the detained person on whose behalf this petition is made, is the lawful minor son of your petitioner, who is a lawfully domiciled merchant

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\*Page-number appearing at foot of page of original certified Transcript of Record.



in the United States, and as such is entitled to enter the United States; that the said Siu Mooy Chew, hereinafter in the petition referred to as the "detained," is unlawfully imprisoned, detained, confined and restrained of his liberty by John D. Nagle, Commissioner of Immigration for the Port of San Francisco, at the Immigration Station at Angel Island, county of Marin, State and Northern District of California; that said imprisonment, detention, confinement and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6, 1882, July 4, 1884, November 3, 1893, and the Act of Congress of April 29, 1902, as amended and re-enacted by Section V of the Deficiency Act of April 7, 1904, [2] which said Acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner, intends to deport the said detained Siu Mooy Chew away from and out of the United States to the Republic of China on a steamer sailing from the Port of San Francisco on July 26th, 1923.

That the said Commissioner of Immigration claims that the said detained arrived at the Port of San Francisco on or about the 19th day of April, 1923, Ex. SS. "Pres. Cleveland," #22058/4-26, and thereupon made application to enter the United States as the minor son of Siu Say, your petitioner,

a lawfully domiciled Chinese merchant actively engaged in business in the firm of Yet Sing Company, Suisun, California, and that the application of the said detained to enter the United States as the minor son of a lawfully domiciled merchant was denied by the said Commissioner of Immigration; that an appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration to the Secretary of the Department of Labor, and that the said Secretary of Labor thereafter dismissed the said appeal. That it is claimed by the said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of the said Commissioner and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statutes in such cases made and provided and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner, on his information and belief, alleges that the hearing and proceedings had herein and the action of the said Commissioner of Immigration and the said Secretary of Labor was and is in excess of the authority committed to them by the said statutes, and in this behalf your petitioner alleges:

That at the hearing accorded the said detained upon his [3] application for admission as the minor son of a lawfully domiciled merchant, the evidence introduced and submitted upon behalf of the said detained was of such a conclusive kind and

character and was of such legal weight and sufficiency that it was an abuse of discretion on the part of the said Commissioner of Immigration and the said Secretary of Labor not to be guided thereby.

That your petitioner is informed and believes that the denial of admission of the detained is based upon immaterial discrepancies alleged to have occurred in the testimony of your petitioner and the said detained, and the denial on that ground is based upon prejudice against the detained because he is of the Chinese race.

That your petitioner has not in his possession any part of the record or testimony submitted upon the examination of the case of the said detained under the direction of the said Commissioner of Immigration, nor any copy of the reports rendered thereon, nor copies of the proceedings had before the Secretary of Labor at Washington, and a copy of the said proceedings being in the possession of the said Commissioner, your petitioner does therefore stipulate that when a copy of the said immigration record is brought before this Court and produced by the immigration authorities, in accordance with their custom and practice in cases of this character, that your petitioner will then and there agree and ask that the said immigration record so presented be deemed and considered part and parcel of this petition, with the same force and effect as if filed herewith.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the Commissioner of Immigration, and

directing him to hold the body of the said detained within the jurisdiction of this Court, and to present the body of the said detained before this Court, at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into, [4] all to the end that the said detained may be permitted to enter the United States and take up his residence therein, having a lawful right to said privilege, and that he may thereafter go hence without day.

Dated July 25th, 1923.

JOSEPH P. FALLON,  
Attorney for Petitioner. [5]

State of California,  
City and County of San Francisco,—ss.

Siu Say, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that he has heard read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

SIU SAY.

Subscribed and sworn to before me this 25th day of July, 1923.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Jul. 25, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[6]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

**Order to Show Cause.**

Upon reading and filing the verified petition of Siu Say, praying for the issuance of the writ of habeas corpus.

IT IS HEREBY ORDERED that John D. Nagle, as Commissioner of Immigration at the Port of San Francisco, at Angel Island, be and appear before the above-entitled Court, Department Number Two thereof, on Monday, the 30th day of July, 1923, to show cause, if any he have, why a writ of habeas corpus should not issue in this matter and the petition granted as prayed, and this at the hour of 10 o'clock A. M. of said day; and

IT IS FURTHER ORDERED that said Siu Mooy Chew be not removed from the jurisdiction of this Court until the further order of this Court; and

IT IS FURTHER ORDERED THAT a copy of this order be served upon said John D. Nagle, or such other person having the said Siu Mooy Chew in custody as an officer of said John D. Nagle.

Dated July 25th, 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

[Endorsed]: Filed Jul. 25, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[7]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

**Demurrer to Petition for Writ of Habeas Corpus.**

Comes now the respondent, John D. Nagle, Commissioner of Immigration, at the Port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

**I.**

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.



WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,  
United States Attorney.  
THOMAS T. CALIFRO,  
Asst. United States Attorney,  
Attorneys for Respondent.

[Endorsed]: Filed August 27, 1923. Walter B. Maling, Clerk. [8]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 27th day of August, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable WM. C. VAN FLEET, District Judge.

No. 17,945.

In the Matter of SIU MOOY CHEW, on Habeas Corpus.

**(Order Denying Petition for Writ, etc.)**

This matter came on regularly this day for hearing on order to show cause as to issuance of a writ of habeas corpus herein. J. P. Fallon, Esq., was present for and on behalf of petitioner and detained. Thos. T. Califro, Esq., Asst. U. S. Atty., was present for and on behalf of respondent, and

filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration records be filed as Respondent's Exhibits "A," "B," "C," "D" and "E" and that the same be considered as part of original petition. After due consideration had thereon, the Court ordered that said demurrer to petition for writ of habeas corpus be and the same is hereby sustained, the petition for writ of habeas corpus denied and order show cause discharged. [9]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

### **Notice of Appeal.**

To the Clerk of the said Court, and to the Honorable John T. Williams, United States Attorney in and for the Southern Division of the United States District Court, for the Northern District of California, Second Division.

You, and each of you, will please take notice that Siu Say, the petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered



herein August 27th, 1923, denying the petition for a writ of habeas corpus filed herein.

JOSEPH P. FALLON,  
Attorney for Petitioner.

[Endorsed]: Filed Sep. 4, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[10]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

**Petition for Appeal.**

Comes now Siu Say, the petition in the above-entitled matter, and respectfully shows:

That on the 27th day of August, 1923, a judgment and order was made by the above-entitled Court and entered herein denying a writ of habeas corpus in the above-entitled matter and dismissing the petition of said petitioner for a writ of habeas corpus in which said judgment and order certain errors were committed to the prejudice of the above-named Siu Mooy Chew, which more fully appear by his assignment of errors filed herewith.

WHEREFORE, your petitioner prays that an appeal may be allowed to the United States Circuit

Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that the Clerk of the above-entitled Court be directed to make and prepare a transcript of all the papers, proceedings and record of the above-entitled matter and to transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law, and for an order that the execution of the warrant of deportation of said Siu Mooy Chew be stayed pending this appeal.

JOSEPH P. FALLON,

Attorney for Petitioner.

[Endorsed]: Filed Sep. 4, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Dep. Clerk.  
[11]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW,  
#22058/4-26 Ex. SS. "Pres. Cleveland,"  
April 19, 1923; Merchant's Son; on Habeas  
Corpus.

### **Assignment of Errors.**

Now comes the petitioner, Siu Say, through his attorney, Joseph P. Fallon, Esq., and sets forth the errors he claims the above-entitled Court committed in denying his petition for a writ of habeas corpus as follows:

I.

That said Court erred in not granting said petition for a writ of habeas corpus.

II.

That said Court erred in denying said petition for a writ of habeas corpus.

III.

That said Court erred in holding that the petition did not show or tend to show that said Siu Mooy Chew did not obtain or was accorded a full and fair hearing or any legal hearing, by said immigration officers or by said Secretary of Labor.

IV.

That the Court erred in not holding that the evidence submitted upon the application of the said detained to enter the United States was of such a conclusive kind and character and was of such legal weight and sufficiency that it was an abuse of discretion on the part of said immigration officials not to be guided thereby.

JOSEPH P. FALLON,

Attorney for Petitioner.

[Endorsed]: Filed Sep. 4, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[12]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW, #22058/4-26 Ex. SS. "Pres. Cleveland," April 19, 1923; Merchant's Son; on Habeas Corpus.

**Order Allowing Appeal.**

It appearing to the above-entitled Court that Siu Say, the petitioner herein, has this day filed and presented to the above Court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor;

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all the papers, proceedings and record in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals, for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Siu Mooy Chew be and the same is hereby stayed pending

this appeal and that the said Siu Mooy Chew be not removed from the jurisdiction of this Court pending this appeal.

Dated Sept. 4th, 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

[Endorsed]: Filed Sep. 4, 1923. Walter B. Mal-  
ing, Clerk. By C. W. Calbreath, Deputy Clerk.  
[13]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, Second Division.

No. 17,945.

In the Matter of SIU MOOY CHEW, on Habeas  
Corpus.

**Stipulation and Order Respecting Withdrawal of  
Immigration Record.**

It is hereby stipulated and agreed by and be-  
tween the attorney for the petitioner and appellant  
herein and the attorney for the respondent and ap-  
pellee herein, that the original immigration record  
in evidence and considered as part and parcel of  
the petition for a writ of habeas corpus upon hear-  
ing of the demurrer in the above-entitled matter,  
may be withdrawn from the files of the Clerk of  
the above-entitled Court and filed with the Clerk  
of the United States Circuit Court of Appeals in  
and for the Ninth Circuit, there to be considered  
as a part and parcel of the record on appeal in the

above-entitled case with the same force and effect as if embodied in the transcript of the record, and so certified to by the Clerk of the Court.

Dated San Francisco, Cal., September 5, 1923.

JOHN T. WILLIAMS,

Attorney for Respondent and Appellee.

JOSEPH P. FALLON,

Attorney for Petitioner and Appellant.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration record therein referred to may be withdrawn from the office of the Clerk of this Court and filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by this Court.

Dated San Francisco, Cal., September 5th, 1923.

JOHN S. PARTRIDGE,

United States District Judge.

[Endorsed]: Filed Sept. 5, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[14]

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**Certificate of Clerk U. S. District Court to Transcript on Appeal.**

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 14 pages, numbered from 1 to 14, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the matter of Siu Mooy Chew



on Habeas Corpus No. 17945, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal (copy of which is embodied herein), and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Five Dollars and Eighty Cents (\$5.80) and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal issued herein (page 16).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of September, 1923.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [15]

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### **Citation on Appeal.**

United States of America,—ss.

The President of the United States, to John D. Nagle, Commissioner of Immigration, Port of San Francisco, and John T. Williams, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Siu Say is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ———, United States District Judge for the Southern Division of the Northern District of California, this — day of September, A. D., 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

[Endorsed]: No. 17945. United States District Court for the Northern District of California. Siu Say, Appellant, vs. John D. Nagle, Commissioner of Immigration, Port of San Francisco. Citation on Appeal. Filed Sept. 5, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[16]

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[Endorsed]: No. 4103. United States Circuit Court of Appeals for the Ninth Circuit. Siu Say, Appellant, vs. John D. Nagle, as Commissioner of Immigration, Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the



Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed September 8, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

